



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **Agency Information Collection Activities: Notice of Intent to Renew Collection**

#### **3038-0092, Customer Clearing Documentation and Timing of Acceptance for Clearing**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information and to allow 60 days for public comment. The Commission adopted final rules, which prohibit swap dealers (“SDs”) and major swap participants (“MSPs”) from interfering or attempting to influence the decisions of affiliated future commission merchants (“FCMs”) with regard to the provision of clearing services and activities and prohibit FCMs from permitting them to do so. The Commission also adopted rules to prohibit SDs and MSPs from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Commodity Exchange Act. The Commission adopted further rules requiring that derivatives clearing organization (“DCO”) rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an

unaffiliated designated contract market or swap execution facility. This notice solicits comments on the obligation to maintain records related to clearing documentation between the customer and the customer's clearing member.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by OMB Control No. 3038-0092, by any of the following methods:

- The Agency's web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.

- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Same as Mail above.

- Federal eRulemaking Portal: <http://www.regulations.gov/>. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

**FOR FURTHER INFORMATION:** Christopher Hower, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; (202) 418-6703; email: [chower@cftc.gov](mailto:chower@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C.

3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

**Title:** Customer Clearing Documentation and Timing of Acceptance for Clearing (OMB Control No. 3038-0092). This is a request for extension of a currently approved information collection.

**Abstract:** Section 4d(c) of the Commodity Exchange Act (“CEA” or “Act”), as amended by the Dodd-Frank Act, directs the Commission to require futures commission merchants to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Similarly, section 4s(j)(5), as added by the Dodd-Frank Act, requires swap dealers and major swap participants to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Section 4s(j)(5) also requires swap dealers and major swap participants to ensure that any persons providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might bias their judgment or contravene the core principle of open access. Section 4s(j)(6) of the CEA prohibits a swap dealer and major swap participant from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material

anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. Section 2(h)(1)(B)(ii) of the CEA requires that derivatives clearing organization rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

Pursuant to these provisions, the Commission adopted § 1.71(d)(1) relating to FCMs and § 23.605(d)(1) relating to swap dealers and major swap participants. These regulations prohibit swap dealers and major swap participants from interfering or attempting to influence the decisions of affiliated FCMs with regard to the provision of clearing services and activities and would prohibit FCMs from permitting them to do so. The Commission also adopted § 23.607 to prohibits a swap dealer and major swap participant from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. The Commission adopted § 39.12(b)(2) to require that derivatives clearing organization rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market or swap execution facility.

As discussed further below, the additional information collection burden arising from the regulations primarily is restricted to the costs associated with the affected registrants' obligation to maintain records related to clearing documentation between the customer and the customer's clearing member.

The information collection obligations imposed by the regulations are necessary to implement certain provisions of the CEA, including ensuring that registrants exercise

effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

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<sup>1</sup> 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**Burden Statement:** The respondent burden for this collection is estimated to average between 16 hours for FCMs and SDs and MSPs, and 40 hours for DCOs per response. This estimate includes the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The total annual cost burden per respondent is estimated to be \$736 for FCMs, SDs, and MSPs and \$1,840 for DCOs. The Commission based its calculation on an hourly wage rate of \$46 for a financial manager to maintain the data.

Respondents/Affected Entities: Swap dealers, Major Swap Participants, Futures Commission Merchants, and Derivatives Clearing Organizations.

Estimated number of respondents: 239 Swap Dealers, Major Swap Participants and Futures Commission Merchants, and 14 Derivatives Clearing Organizations.

Estimated total annual burden on respondents: 3,824 for FCMs, SDs, and MSPs, and 560 hours for DCOs.

Frequency of collection: As needed.

(Authority: 44 U.S.C. 3501 et seq.)

Dated: May 11, 2015

Robert N. Sidman,

Deputy Secretary of the Commission.

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